

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
RUPARI HOLDING CORP., <i>et al.</i> , ¹	:	Case No. 17-10793 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	-----X	Re: Docket No. 27

**ORDER (I) (A) APPROVING AND AUTHORIZING BIDDING PROCEDURES IN
CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL ASSETS,
(B) APPROVING STALKING HORSE PROTECTIONS, (C) APPROVING
PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES,
(D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

This matter coming before the Court on the motion (the “Motion”)² of the above-captioned debtors (the “Debtors”) for the entry, pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court for the District of Delaware (the “Local Rules”), of (i) an order (i)(a) approving procedures in connection with the sale of some or all of the Debtors’ assets; (b) approving the Stalking Horse Protections; (c) approving procedures related to the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases; (d) approving the form and manner of notice thereof; and (e) granting related relief; and (ii) (a)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Rupari Holding Corp. (4943) and Rupari Food Services, Inc. (7933). The mailing address for the Debtors is 15600 Wentworth Avenue, South Holland, Illinois 60473.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

authorizing the sale of the Purchased Assets to the Successful Bidder, free and clear of Encumbrances, except as provided by the relevant Asset Purchase Agreement; (b) approving the assumption and assignment of the Assumed Executory Contracts; and (c) granting related relief; and the Court having reviewed the Motion and the First Day Declaration and the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; (ii) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS FOUND AND DETERMINED THAT:

A. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the relief requested in the Motion relating to the bidding process, including approval of (1) the Bidding Procedures, (2) the Stalking Horse Protections, (3) the procedures described below for the determination of the amounts necessary to cure defaults under the Assumed Executory Contracts (the “Cure Amounts”) so as to permit the assumption of the Assumed Executory Contracts under section 365 of the Bankruptcy Code and their assignment to the Successful Bidder, and (4) the forms of the Procedures Notice and Cure Notice.

B. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling a Sale Hearing to consider

granting the other relief requested in the Motion, including approval of the Sale and the transfer of the Purchased Assets to the Successful Bidder free and clear of all Encumbrances and other interests pursuant to section 363(f) of the Bankruptcy Code.

C. The Stalking Horse Protections as set forth in Section 7.1 of the Stalking Horse Agreement and as modified by this Order, to be paid to the Stalking Horse Purchaser are: (1) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse Purchaser; (2) reasonable and appropriate in light of the size and nature of the proposed Sale, the commitments that have been made, the condition of the Purchased Assets, and the efforts that have been and will be expended by the Stalking Horse Purchaser; and (3) necessary to induce the Stalking Horse Purchaser to continue to pursue the Sale and to continue to be bound by the Stalking Horse Agreement.

D. Moreover, the Stalking Horse Protections, as modified by this Order, are an essential inducement and condition of the Stalking Horse Purchaser's entry into, and continuing obligations under, the Stalking Horse Agreement. Unless it is assured that the Stalking Horse Protections will be available, the Stalking Horse Purchaser is unwilling to be bound under the Stalking Horse Agreement (including the obligation to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures). The Stalking Horse Protections induced the Stalking Horse Purchaser to submit a bid that will serve as a minimum or floor bid for the Purchased Assets on which the Debtors, their creditors and other bidders can rely. The Stalking Horse Purchaser has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Purchased Assets will be realized. The Stalking Horse Protections were negotiated by the Stalking Horse Purchaser and the Debtors and their respective advisors at arms' length and in

good faith. Accordingly, the Stalking Horse Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

E. The Bidding Procedures substantially in the form attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Purchased Assets.

F. The Stalking Horse Purchaser is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stakeholders exist between the Stalking Horse Purchaser and the Debtors. The Stalking Horse Purchaser and its counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Purchaser's negotiation of the Stalking Horse Protections and the Bidding Procedures and entry into the Stalking Horse Agreement.

G. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

H. To the extent any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. All objections to the relief requested in the Motion relating to the Bidding Procedures that have not been withdrawn, waived or settled are overruled except as reflected in the provisions of this Order.

3. The Bidding Procedures attached hereto as Exhibit I are APPROVED and shall govern all Bids and bidding procedures relating to the Sale of the Purchased Assets. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. The Good Faith Deposits of the Stalking Horse Purchaser and all other Qualified Bidders shall be held in escrow by the Debtors or their agent, and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement.

5. The Bid Deadline shall be May ²⁴~~29~~, 2017, at 4:00 p.m. (prevailing Eastern Time).

6. The Stalking Horse Protections are APPROVED and shall be paid in cash when and as set forth in the Stalking Horse Agreement; *provided*, that (a) the Stalking Horse Purchaser delivers the Deposit (as defined in the Stalking Horse Agreement) within one (1) Business Day of the entry of this Order, (b) the Stalking Horse Purchaser irrevocably drops, waives, and abandons all conditions to its closing the Sale by the Bid Deadline, (c) the Expense Reimbursement shall not exceed ~~\$300,000~~ ^{\$260,000} in the aggregate, (d) the Break-Up Fee ~~shall not exceed 3.0% of the of the Stalking Horse Purchase Price, with an aggregate cap for the Stalking Horse Protections of \$1,055,000,~~ ^{be \$795,000} and (e) the Stalking Horse Protections shall be paid only if a Sale closes and shall be paid from the proceeds of a Sale that has closed (collectively, the "Stalking Horse Protections' Conditions"). Only if the Stalking Horse Protections' Conditions have occurred and/or been satisfied in full will the Debtors' obligation to pay the Stalking Horse Protections constitute, pursuant to section 503 of the Bankruptcy Code, an administrative expense claim against each of the Debtors' bankruptcy estates. Payment of the Stalking Horse Protections shall not be subject to avoidance or clawback. Subject to this Order, including,

without limitation, paragraphs 6 and 28, the Stalking Horse Protections shall be payable without any further order of this Court except as otherwise set forth in this Order; *provided*, that copies of all invoices relating to the Expenses Reimbursement shall be sent to counsel to the Debtors, counsel for the Agent for the Prepetition Senior Secured Lenders, and counsel for the Official Committee of Unsecured Creditors (the "Committee"), and if an objection to any invoice submitted by the Stalking Horse Purchaser for an Expenses Reimbursement is received within ten (10) days after such invoice has been delivered to the Debtors (the "Expense Reimbursement Objection Deadline"), the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute. . If no objection is delivered to the Stalking Horse Purchaser by the Expense Reimbursement Objection Deadline, the Debtors shall pay the Stalking Horse Bidder the full amount of the submitted Expense Reimbursement the first business day after the Expense Reimbursement Objection Deadline.

7. Notwithstanding anything to the contrary contained herein, if the Stalking Horse Purchaser is not the Successful Bidder, upon timely payment of the Stalking Horse Protections to the Stalking Horse Purchaser, the Debtors and their respective representatives and affiliates, on the one hand, and the Stalking Horse Purchaser and its representatives and affiliates, on the other hand, shall be deemed to have fully released and discharged each other from any liability resulting from the termination of the Stalking Horse Agreement, and neither the Debtors and their respective representatives and affiliates, on the one hand, nor the Stalking Horse Purchaser and its representatives and affiliates (including, without limitation, the Prepetition Senior Secured Lenders), on the other hand, nor any other Person, will have any other remedy or cause of action under or relating to the Stalking Horse Agreement or any applicable law, including for reimbursement of expenses.

8. The Debtors shall have the right, in consultation with their advisors, the Agent for the Prepetition Secured Lenders and the Committee (together, the "Consultation Parties"), to determine whether a bid is a Qualified Bid and shall notify all Potential Bidders whether their bids have been recognized as such as promptly as practicable after a Potential Bidder delivers all of the materials required by the Bidding Procedures; provided, however, that the Stalking Horse Purchaser is hereby deemed a Qualified Bidder, and the Stalking Horse Agreement appended to the Motion as **Exhibit B**, is deemed a Qualified Bid in connection with the bidding process, the Auction, and the Sale subject to paragraph 6 of this Order; and provided, further, that, subject to ability of the Committee to assert a challenge to the liens of the Prepetition Senior Secured Parties by the Investigation Termination Date, the Agent for the Prepetition Senior Secured Lenders is hereby deemed a Qualified Bidder at its sole discretion and it shall be allowed, but not required, to credit bid up to the full amount of its claim, which credit bid shall be deemed a Qualified Bid in connection with the bidding process, the Auction, and the Sale.³

9. The Auction, if an auction is necessary, shall be held at 10:00 a.m. (prevailing Eastern Time) on [May 31], 2017, at the offices of DLA Piper LLP (US), 444 W. Lake Street, Suite 900, 60606 Chicago, Illinois, or such other location as shall be timely communicated to all entities entitled to attend the Auction. If no Qualifying Bid other than the Stalking Horse Agreement is received before the Bid Deadline, no Auction shall be conducted and the Stalking Horse Purchaser shall be deemed the Successful Bidder. Tge

10. If the Auction is conducted, each Qualified Bidder attending shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the

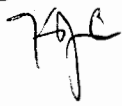
³ Capitalized terms used in this paragraph not otherwise defined herein or in the Motion shall have the meanings ascribed to them in the Court's *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 362 and 507 (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 49] (the "Interim Cash Collateral Order").

Bankruptcy Code, with respect to the bidding or the Sale. The auction shall be transcribed and only the Debtors, the Stalking Horse Purchaser, any other Qualified Bidder that has timely submitted a Qualified Bid, the Agent for the Prepetition Senior Secured Lenders, and the Committee, and the advisors to each of the foregoing shall attend the Auction in person; *provided, however*, that any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before the Bid Deadline, which written notice shall be sent to counsel for the Debtors via electronic mail, to Maris J. Kandestin, Esq., at maris.kandestin@dlapiper.com.

11. The Debtors shall determine, in consultation with the Committee and the Agent for the Prepetition Senior Secured Lenders (if the Agent for the Prepetition Senior Secured Lenders has elected not to become a Qualified Bidder) which Qualified Bid is the highest or otherwise best offer for the Purchased Assets, giving effect to the Stalking Horse Protections payable to the Stalking Horse Purchaser, as well as any additional liabilities to be assumed by the relevant Qualified Bidder and any additional costs which may be imposed on the Debtors.

12. The Sale Hearing shall be held on [June 6], 2017 at 10:00 .m. (prevailing Eastern Time) before this Court, the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom 5. FAC

13. Any objections to the Sale, with the exception of Cure Objections and Adequate Assurance Objections (each as defined herein), must (a) be in writing, (b) state the basis of such objection with specificity, (c) conform to the Bankruptcy Rules and the Local Rules and (d) be filed with the Bankruptcy Court and served in accordance with the rules of this Court upon: (i) counsel to the Debtors: DLA Piper LLP (US), 444 W. Lake Street, Suite 900, Chicago, Illinois 60606 (Attn: Richard A. Chesley, Esq. (richard.chesley@dlapiper.com) and John Lyons, Esq.

(john.lyons@dlapiper.com) and DLA Piper LLP (US), 1201 N. Market Street, Suite 2100, Wilmington, Delaware 19801 (Attn: R. Craig Martin, Esq. (craig.martin@dlapiper.com) and Maris J. Kandestin, Esq. (maris.kandestin@dlapiper.com)); (ii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 525 West Monroe, Chicago, IL 60661 (Attn: Matthew Brown (matthew.brown@kattenlaw.com) and Paige Barr (paige.barr@kattenlaw.com); (iii) counsel to the Agent to the Prepetition Senior Secured Lenders, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661 (Attn: John Sieger (john.sieger@kattenlaw.com)); (iv) counsel to the agent for the subordinated creditors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (Attn: James Stempel (james.stempel@kirkland.com)); (v) counsel to the subordinated indebtedness agent, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (Attn: James Stempel (james.stempel@kirkland.com)); and (vi) counsel to the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Jeffrey Cohen and Wojciech Jung (jcohen@lowenstein.com, wjung@lowenstein.com); and (vii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: David L. Buchbinder, Esq. and Brya Keilson, Esq.) (collectively, the "Service Parties") so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on June 2, 2017. 


14. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and the Debtors shall have the exclusive right, in the exercise of their fiduciary obligations and business judgment, in consultation with the Consultation Parties, to cancel the Sale at any time.

15. The following forms of notice are approved: (a) the Notice of Sale Procedures, Auction Date, and Sale Hearing, in the form substantially similar to that attached to the Motion as Exhibit D (the "Procedures Notice"); and (b) the Notice to Counterparties to Executory Contracts and Unexpired Leases That May Be Assumed and Assigned (the "Cure Notice"), in the form substantially similar to that attached to the Motion as Exhibit E.

16. The Debtors shall, as soon as practicable, but in no event later than three (3) business days after the entry of this Order, serve a copy of the Procedures Notice and this Order by first class mail, postage prepaid on (a) the United States Trustee, (b) the Committee, (c) any parties requesting notices in these cases pursuant to Bankruptcy Rule 2002, (d) all known creditors of the Debtors, (e) counsel to the Stalking Horse Purchaser, (f) counsel to the Agent for the Prepetition Senior Secured Lenders, and (g) all known Potential Bidders.

17. The Debtors shall, as soon as practicable, but in no event later than three (3) business days after the entry of this Order, serve the Motion and the Cure Notice upon each counterparty to the Assumed Executory Contracts and its counsel (if known). The Cure Notice shall (i) state the date, time and place of the Sale Hearing, (ii) specify the date by which any objection to the assumption and assignment of the Assumed Executory Contracts must be filed and served, (iii) include a description of each Assumed Executory Contract, and (iv) identify the amount, if any, that the Debtors believe is owed to each counterparty to the Assumed Executory Contracts in order to cure any monetary defaults thereunder (the "Cure Amounts") pursuant to section 365 of the Bankruptcy Code.

18. All Qualified Bidders must designate all Contracts and Leases for assumption and assignment seven (7) days prior to the Auction. For any Contracts or Leases that are designated as Assumed Executory Contracts by the Successful Bidder by service of a Supplemental Cure

May 16 

Notice, which Supplemental Cure Notice must be served no later than _____, 2017, the Debtors shall, as soon as practicable, but in no event later than one (1) business day of receiving such designation, serve the Motion and the Supplemental Cure Notice upon each counterparty to such Assumed Executory Contracts and its counsel (if known).

19. If any counterparty to an Assumed Executory Contract objects for any reason to the proposed Cure Amount set forth in the Cure Notice, such counterparty must file with the Court a written objection stating that it objects to the relevant Cure Amount (each, a "Cure Objection") and serve such Cure Objection so as to be received by the Service Parties by no later than [], 2017 at 4:00 p.m. (prevailing Eastern Time) (the "Assumed Executory Contract Objection Deadline"). With respect to an Assumed Executory Contract listed in a Supplemental Cure Notice, the Assumed Executory Contract Objection Deadline shall be fourteen (14) days after the service of such Supplemental Cure Notice on the contract counterparty. Each Cure Objection must set forth with specificity each and every asserted default in the applicable Contract or Lease and the monetary cure amount asserted by the counterparty to the extent it differs from the amount, if any, proposed by the Debtors in the Cure Notice or the Supplemental Cure Notice, as applicable. Notwithstanding the foregoing, an Assumed Executory Contract counterparty is encouraged to contact Debtors' counsel, DLA Piper LLP (US), prior to the deadline to file and serve an objection to the Cure Amount in an attempt to reach consensus on the Cure Amount based upon reasonable and supportable documentation provided by such counterparty

20. In the event that the Debtors and the non-debtor counterparty cannot resolve the Cure Objection, the Debtors shall segregate the disputed Cure Amount (each, a "Disputed Cure Amount") pending the resolution of such dispute by the Court or mutual agreement of the

parties. Cure Objections shall be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

21. Any counterparty to an Assumed Executory Contract that fails to timely file and serve a Cure Objection shall be forever barred from asserting that it is owed a Cure Amount in excess of that set forth in the Cure Notice or Supplemental Cure Notice, as applicable,. If no timely Cure Objection is filed and served with respect to an Assumed Executory Contract, the Cure Amount identified in the Cure Notice with respect to such Assumed Executory Contract shall be the only amount necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults thereunder if the Successful Bidder ultimately decides to have such Assumed Executory Contract assumed by the Debtors and assigned to it.

22. No later than twenty-four (24) hours following the conclusion of the Auction, the Debtors shall file and serve a notice of the Successful Bidder(s) and Backup Bidder(s) (the "Notice of Successful Bidders") and shall serve such Notice of Successful Bidders by overnight mail and, to the extent available, electronic mail, on each counterparty to an Assumed Executory Contract. At least two (2) business days prior to the Sale Hearing, the Successful Bidder(s) shall furnish information related to their ability to perform under the Assumed Executory Contracts, subject to such counterparties' execution of a non-disclosure agreement, to the extent required by the Successful Bidder.

23. If any counterparty to an Assumed Executory Contract objects for any reason (other than reasons for a Cure Objection), including on adequate assurance of future performance grounds (each, an "Adequate Assurance Objection"), to the assumption and assignment of its Assumed Executory Contract, such counterparty must file and serve such Adequate Assurance Objection so as to be received by the Service Parties by no later than (the "Adequate Assurance

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Objection Deadline"): (i) 4:00 p.m. (prevailing Eastern Time) on [], 2017 or (ii) the date otherwise specified in the Notice of Successful Bidder, as applicable (or, alternatively, the date set forth in the motion to assume such Assumed Executory Contract if such contract is to be assumed and assigned after the Sale Hearing). Any and all determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing. Any counterparty failing to timely file an Adequate Assurance Objection shall be forever barred from objecting, on any ground, to assumption by the Debtors and assignment to the Successful Bidder of the relevant Assumed Executory Contract.

24. If a Contract or Lease is assumed and assigned pursuant to Court Order, the counterparty to such Assumed Executory Contract shall receive the applicable Cure Amount, if any (except for Disputed Cure Amounts), no later than three (3) business days following the closing of the Sale, with payment to be made pursuant to the terms of the Successful Bidder's Asset Purchase Agreement. Except to the extent otherwise provided in the Successful Bidder's Asset Purchase Agreement, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising under or in connection with the Assumed Executory Contracts after the assumption and assignment thereof pursuant to section 365(k) of the Bankruptcy Code.

25. Notwithstanding any provision in this Order, the Stalking Horse Agreement or the Bidding Procedures to the contrary, this Order does not satisfy, and the Court has not yet determined if the Debtors have satisfied, the requirements of section 365 of the Bankruptcy Code for any particular Assumed Executory Contract, including those relating to the Cure Amounts or the provision of adequate assurance of future performance. No Assumed Executory Contract shall be deemed assumed or assumed and assigned until the later of (a) the date the Court has

entered an order authorizing the assumption and assignment of such Assumed Executory Contract or (b) the date the Sale is closed. The Successful Bidder shall have no rights in and to any particular Assumed Executory Contract until such time as the particular Assumed Executory Contract is assumed and assigned to the Successful Bidder.

26. The Debtors' inclusion of a Contract or Lease on the Cure Notice or any Supplemental Cure Notice shall not guarantee that such Contract or Lease will ultimately be assumed or assumed and assigned. The Cure Notice and any Supplemental Cure Notice shall be without prejudice to the Successful Bidder's right, if any, under its Asset Purchase Agreement to subsequently (a) decline to take assignment of any Contract or Lease or (b) include additional Contracts or Leases for assumption and assignment pursuant to the provisions of Paragraph 18 herein.

27. The inclusion of a Contract or Lease and related Cure Amount on a Cure Notice or Supplemental Cure Notice shall not constitute or be deemed to be a determination or admission by the Debtors, the Stalking Horse Purchaser or any other party in interest that such Contract or Lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Cost constitutes a claim against the Debtors in such amount (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims and causes of action with respect to each Contract or Lease listed on the Cure Notice or any Supplemental Cure Notice.

28. If the Stalking Horse Purchaser is not the Successful Bidder, the proceeds of the Sale shall be paid to the Debtors at the closing for distribution as follows: (a) *first*, at Closing, for the payment of the Stalking Horse Protections to the Stalking Horse Purchaser, subject to all of the Stalking Horse Protections' Conditions having occurred and/or been satisfied in fully

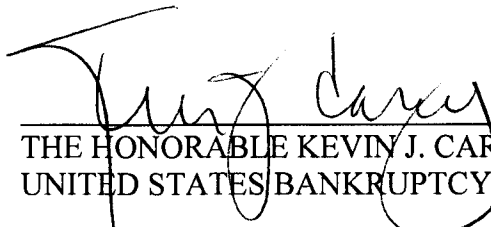
pursuant to paragraph 6 of this Order, and (b) *second*, the remaining cash proceeds from the Sale shall be remitted at Closing the Agent for the Prepetition Senior Secured Lenders, as applicable, in full or partial, as the case may be, satisfaction of their secured claims under the Credit Facility, including, without limitation, all accrued prepetition and postpetition interest at the default rate, to the extent allowed, and all of the Agent to the Prepetition Senior Secured Lenders' professional fees, expenses, and costs under the Prepetition Credit Agreement, pursuant to the applicable order authorizing the Debtors' use of cash collateral. If the Stalking Horse Purchaser is the Successful Bidder, (x) *first*, the Stalking Horse Purchaser shall pay the portion of the purchase price equal to the amount of the Real Estate Taxes (as defined in the Stalking Horse Agreement) into an escrow account maintained by the Debtors' counsel at the Closing and the Debtors shall use such funds as provided under the Stalking Horse Agreement, (y) *second*, the Stalking Horse Purchaser shall pay the portion of the purchase price equal to the amount of Cure Costs (as defined in the Stalking Horse Agreement) into an escrow account maintained by the Debtors' counsel at the Closing and the Debtors shall use such funds as provided under the Stalking Horse Agreement, and (z) *third*, subject to ability of the Committee to assert a challenge to the liens of the Prepetition Senior Secured Parties by the Investigation Termination Date, the remaining cash proceeds from the Sale shall be remitted at Closing the Agent for the Prepetition Senior Secured Lenders, as applicable, in full or partial, as the case may be, satisfaction of their secured claims under the Credit Facility, including, without limitation, all accrued prepetition and postpetition interest at the default rate, to the extent allowed, and all of the Agent to the Prepetition Senior Secured Lenders' professional fees, expenses, and costs under the Prepetition Credit Agreement, pursuant to the applicable order authorizing the Debtors' use of cash collateral.

29. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit referenced herein, the Stalking Horse Agreement, or with the Motion, the provisions of this Order shall control.

30. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

31. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

Dated: April 27, 2017
Wilmington, Delaware



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed in connection with the proposed sale of certain tangible and intangible assets (the "Purchased Assets") of the Debtors that own the Purchased Assets (in such capacity, the "Sellers"), in connection with the Debtors' jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), lead case number [17-10793 (KJC)].

The Sellers agreed to that certain asset purchase agreement, dated April 11, 2017 with CBQ, LLC (the "Stalking Horse Purchaser"), pursuant to which the Stalking Horse Purchaser will acquire the Purchased Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the "Stalking Horse Agreement," a copy of which is attached hereto as Exhibit B). The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

ASSETS TO BE SOLD

The Debtors seek to consummate a sale of some or all of the Purchased Assets (the "Sale"), which include the assets described in Section 1.1 of the Stalking Horse Agreement. The sale of the Purchased Assets is on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Sellers, their agents or estates, except to the extent set forth in the purchase agreements of the Successful Bidder (as defined herein) as approved by the Bankruptcy Court. Except as otherwise provided in such approved purchase agreement, all of the Seller's right, title and interest in and to each Purchased Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (collectively, the "Encumbrances"), such Encumbrances to attach solely to the net proceeds of the Sale.

THE BID PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Purchased Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the Stalking Horse Agreement will serve as the "stalking-horse" bid for the Purchased Assets.

Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person other than the Stalking Horse Purchaser and the Agent for the Prepetition Senior Secured Lenders who wishes to participate in the bidding process (a "Potential Bidder") must deliver the following to the Notice Parties (as defined below):

(i) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid;

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Sellers to a Potential Bidder) in form and substance satisfactory to (i) the Debtors, (ii) the Agent for the Prepetition Senior Secured Lenders, (iii) the official committee of unsecured creditors (the "Committee") appointed in these chapter 11 cases (collectively, the "Consultation Parties"), in substantially the same form as, or a form more favorable to the Debtors than, that signed by the Stalking Horse Purchaser; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions;

(iii) A Potential Bidder that delivers the documents and information described above or that the Debtors determine, in consultation with the Consultation Parties, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale, and whose Qualified Bid is received by Seller no later than seven (7) days prior to the Auction is deemed qualified (a "Qualified Bidder"); and

(iv) Seller shall provide Buyer notice of all Qualified Bids and supporting documentation submitted therewith within forty-eight (48) hours of Seller's determination that such bid is a Qualified Bid, and shall provide any information received related to the terms and conditions of such Qualified Bid.

Due Diligence

The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with the Consultation Parties, deem appropriate, which may include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information; provided, however, that with respect to any strategic bidders, the Debtors may make reasonable commercial efforts to provide such strategic bidders with the same information provided to the Stalking Horse Purchaser. The Debtors must promptly advise the Stalking Horse Purchaser in the event any other Potential Bidder receives diligence the Stalking Horse Purchaser has not previously received and the Stalking Horse Purchaser will promptly be provided with access to such diligence materials. The due diligence period will extend through and include the Bid Deadline. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors after consultation with the Consultation Parties.

Provisions Governing Qualified Bids

A bid will be considered a "Qualified Bid" only if the bid is submitted by a Qualified Bidder and the Debtors determine, after consultation with the Consultation Parties, complies with all of the following:

- a. it is received by Seller prior to the Bid Deadline (as defined below);
- b. it states that the applicable Qualified Bidder offers to purchase, in cash or, if applicable, through a credit bid, all of the Purchased Assets upon the terms and conditions that the Debtors, in consultation with the Consultation Parties, reasonably determine are no less favorable to the Debtors than those set forth in the Stalking Horse Agreement;
- c. it offers to purchase all or substantially all of the Purchased Assets or only a portion of the Purchased Assets; provided, however, that a Bid that offers to purchase only a portion of the Purchased Assets may only be a Qualified Bid to the extent that the value of such Bid, in combination with the value of other Bids for other Purchased Assets, exceeds the Minimum Initial Overbid Amount (as defined below) applicable to Qualified Bids for all or substantially all the Purchased Assets. The Debtors, in consultation with the Consultation Parties, may waive or modify the application of the Qualified Bid conditions in respect of Bids for a portion of the Purchased Assets, including, *inter alia*, the amount of the Good Faith Deposit;
- d. it includes a signed writing stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder (each, as defined below) its offer shall

remain irrevocable until the later of (i) the closing of the Sale to the Successful Bidder or the Backup Bidder, and (ii) the date that is twenty (20) days after the Sale Hearing;

- e. it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;
- f. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement (an "Asset Purchase Agreement") and the proposed order for approval of the Sale by the Bankruptcy Court;
- g. it includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement;
- h. it provides for the repayment of all other costs, simultaneously with the closing of the Sale contemplated under the Asset Purchase Agreement;
- i. it has a value to the Debtors, determined in the Debtors' reasonable business judgment after consultation with the Committee that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (i) the aggregate amount of the Stalking Horse Protections, plus (ii) \$500,000 (the "Minimum Initial Overbid Amount");
- j. it identifies with particularity which Contracts and Leases the Qualified Bidder wishes to assume and provides details of the Qualified Bidder's proposal for the treatment of related cure costs and the provision of adequate assurance of future performance (the "Adequate Assurance Information") to the counterparties to such Contracts and Leases;
- k. it includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (iv) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its Bid;
- l. it includes evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Consultation Parties, of authorization and approval from the

Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Asset Purchase Agreement;

- m. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, in consultation with the Consultation Parties, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 3.0% of the Purchase Price;
- n. it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Sellers; and
- o. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties.

Notwithstanding the foregoing, the Stalking Horse Purchaser and the Agent for the Prepetition Senior Secured Lenders shall each be deemed a Qualified Bidder, and the Stalking Horse Agreement will be deemed a Qualified Bid, and, subject to ability of the Committee or non-debtor party-in-interest vested with authority by the Court to assert a challenge to the liens of the Prepetition Senior Secured Parties by the Investigation Termination Date, the Agent for the Prepetition Senior Secured Lenders will be allowed to credit bid up to the full amount of its claim for all purposes in connection with the bidding process, the Auction, and the Sale without compliance with the above enumerated requirements. For the avoidance of doubt, in the event the Agent for the Prepetition Senior Secured Lenders elects to submit a Qualified Bid, the term "Consultation Parties" for all purposes in connection with the Bid Procedures shall be defined as the Debtors and the Committee, to the exclusion of the Agent for the Prepetition Senior Secured Lenders.

The Debtors shall notify the Stalking Horse Purchaser, Agent for the Prepetition Senior Secured Lenders, and all Qualified Bidders in writing as to whether or not any bids (other than the Stalking Horse Agreement) constitute Qualified Bids, and will notify each Qualified Bidder that has submitted a bid (other than the Stalking Horse Purchaser), whether such Qualified Bidder's bid constitutes a Qualified Bid promptly after such determination has been made; provided such notification shall not be given later than forty-eight (48) hours following the expiration of the Bid Deadline.

Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtors: DLA Piper LLP (US), 444 W. Lake Street, Suite 900, Chicago, Illinois 60606 (Attn: Richard A. Chesley, Esq. (richard.chesley@dlapiper.com) and John Lyons, Esq. (john.lyons@dlapiper.com)); (ii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 525 West Monroe, Chicago, IL 60661 (Attn: Matthew Brown (matthew.brown@kattenlaw.com) and Paige Barr (paige.barr@kattenlaw.com)); (iii) counsel to the Agent to the Prepetition Senior Secured Lenders, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661 (Attn: John Sieger (john.sieger@kattenlaw.com)); (iv) counsel to the lenders under the Subordinated Credit Facility, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (Attn: James Stempel (james.stempel@kirkland.com)); counsel to the Committee: Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Jeffrey Cohen and Wojciech Jung (jcohen@lowenstein.com, wjung@lowenstein.com), so as to be received by the foregoing parties no later than 4:00 p.m. prevailing Eastern time on May 27, 2017 (the "Bid Deadline"). The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties.

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Evaluation of Competing Bids

A Qualified Bid will be valued by the Debtors, in consultation with the Consultation Parties, based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Stalking Horse Agreement and/or the proposed sale order, (4) the ability of the Qualified Bidder to obtain appropriate regulatory approvals, (5) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors' estates are not rendered administratively insolvent, and (6) any other factors deemed relevant by the Debtors, in consultation with the Consultation Parties.

No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder upon the expiration of the Bid Deadline.

Auction Process.

If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtors will conduct an auction of the Purchased Assets (the "Auction"), which shall take place at 10:00 a.m. prevailing Eastern time on [May 31], 2017, at the offices of DLA Piper LLP (US), 444 W. Lake Street, Suite 900, Chicago, Illinois 60606, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded and transcribed, shall run in accordance with the following procedures:

- a. only the Debtors, the Stalking Horse Purchaser, any other Qualified Bidder that has timely submitted a Qualified Bid, the Agent for the Prepetition Senior Secured Lenders, and the Committee, and the advisors to each of the foregoing shall attend the Auction in person; *provided, however*, that any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before the Bid Deadline, which written notice shall be sent to counsel for the Debtors via electronic mail, to Maris J. Kandestin, Esq., at maris.kandestin@dlapiper.com.;
- b. only the Stalking Horse Purchaser and such other Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;
- c. the Stalking Horse Bidder will, notwithstanding the elements of the Stalking Horse Purchase Price, be entitled to make subsequent bids for all or substantially all or any combination of the Purchased Assets comprised of cash, further credit bids, additional or different consideration of any type, or any combination of the foregoing;
- d. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any Bids submitted or not submitted in connection with the Sale;
- e. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in

attendance at the Auction in person; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtors will provide copies of the Qualified Bid, or combination of Qualified Bids, which the Debtors believe, after consultation with the Consultation Parties, is the highest or otherwise best offer for the Purchased Assets (the "Starting Bid") to the Stalking Horse Purchaser and all other Qualified Bidders who have timely submitted Qualified Bids;

- f. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;
- g. the Debtors, after consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules (i) are not inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith; (ii) do not, in any way, alter or impair the rights of the Prepetition Senior Secured Lender Agent and the Prepetition Senior Secured Lenders; (iii) do not conflict with the Stalking Horse Agreement (in the event of a conflict between the Stalking Horse Agreement and the Bidding Procedures Order, the latter shall control); and (iv) have disclosed to each Qualified Bidder attending the Auction; and
- h. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a "Subsequent Bid") providing a net value to the Debtors' estates of at least \$500,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise best Bid (each, the "Leading Bid").
- i. A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
- j. Except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtors shall give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors.
- k. The Debtors may accept bids for any portion of the Purchased Assets, as well as bids for substantially all of the Purchased Assets; provided, however, that a Qualified Bid that offers to purchase only a portion of the Purchased Assets may only be part of the Successful Bid to the extent that the value of such Qualified Bid, in combination with the value of other Qualified Bids for other Purchased Assets, exceeds the value of any then-pending Qualified Bid for all or substantially all the Purchased Assets.

Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid submitted at the Auction (including by the Stalking Horse Purchaser) in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer (one or more such bids, collectively the "Successful Bid" and the bidder(s) making such bid(s), collectively, the "Successful Bidder"), and communicate to the Stalking Horse Purchaser and the other Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties, will be required to serve as a back-up bidder (the "Back-Up Bidder") and keep its bid open and irrevocable until the later to occur of twenty (20) days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

Within two (2) business days after conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents necessary to consummate the Successful Bid. Within two (2) business days after conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder and the Back-Up Bidder.

The Debtors will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

Return of Deposits

All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

THE STALKING HORSE PROTECTIONS

In recognition of its expenditure of time, energy, and resources, the Debtors have agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtors will pay, subject to the Bidding Procedure Order, including, without limitation, the full and complete satisfaction and occurrence of all of the Stalking Horse Protections' Conditions (as defined in the Bidding Procedures Order), pursuant to paragraph 6 of the Bidding Procedure Order, the Stalking Horse Purchaser (i) ~~an aggregate break-up fee equal to 3.0% of the of the Stalking Horse Purchase Price~~ (the "Break-Up Fee"), and (ii) the Expenses Reimbursement (as defined in the Bidding Procedures Order) in an amount not to exceed \$260,000 in the aggregate (the Expenses Reimbursement, together with the Break-Up Fee, the "Stalking Horse Protections"); ~~provided, however, that the Stalking Horse Protections shall not exceed \$1,055,000 in the aggregate.~~ The Stalking Horse Purchaser shall provide documentation of the expenses for which it seeks reimbursement to counsel to the Debtors, counsel to the Agent for the Prepetition Senior Secured Lenders, and counsel to the Committee, as provided for in paragraph 6 of the Bidding Procedures Order. The Stalking Horse Protections shall be payable as provided for pursuant to the terms of the Bidding Procedures Order.

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The Debtors have agreed that their obligation to pay the Stalking Horse Protections pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement but is subject to the Bidding Procedures Order.

SALE HEARING

The Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the "Sale Hearing") to begin on or before [June 16], 2017 at [10:00] a.m. (prevailing Eastern Time), subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder on the terms and conditions memorialized in the Successful Bid in accordance with the Bid Procedures.